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May 20, 2010

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: FCC Proposed TCPA Rule

TCPA Rule Committee:

I would like to urge the FCC to revise the proposed rule under the Telephone Consumer Protection Act (TCPA) restricting the use of autodialers and pre-recorded messages to contact consumers on their wireless numbers.

The restrictions on transmitting messages by cell phones originated at a time when consumers were charged a per call usage fee. There was a legitimate concern that consumers would incur additional charges by being called by parties when they had no preexisting or underlying business relationship. However, as cell phone usage has proliferated, providers of cell phone service have discontinued per call charges in favor of flat monthly fees, so this is no longer the concern that it presented when the TCPA was initially enacted.

Many consumers are now using cell phones as their primary or exclusive form of telephonic communications, and increasingly, consumers are transferring their land line telephone numbers to a cell phone. As the proposed rules are currently written, if a land line number is transferred to a cell phone, and is inadvertently dialed, a penalty of \$500 per call can be imposed, regardless of intent. The proposed rules do not address this problem, and the TCPA provides no defense based on a bona fide error. Further, there is no cap on the penalty that may be imposed for dialing a number in error. Thus, if a wrong number is dialed unknowingly once a month over a two year period, a \$12,000 penalty is imposed. The easy portability of telephone numbers from land lines to cell phones makes this a very real problem for businesses.

Because the TCPA was originally enacted to address certain telemarketing activities, the Congress and the FTC have interpreted "telemarketing" to exclude telephone calls to recover debts. The proposed rule does not recognize that distinction.

Furthermore, predictive dialers used by debt collectors do not generate random or sequential numbers, as do autodialers used by telemarketers to make unsolicited telephone calls to non-customers. In addition, dialers used by debt collectors do not

produce numbers using a random or sequential number generator. Instead, the telephone numbers in predictive dialers are those of known customers of the business, and the dialers direct the calls to those specific customers.

Additionally, Predictive dialers enhance the compliance capabilities of debt collectors by eliminating human error, making it possible to restrict calls to certain numbers, to certain individuals, to certain hours and to a set number of calls.

Given the points above, I again urge the FCC to revise the proposed rule and amend the regulations implementing the TCPA.

Sincerely,

David T. Spruill, Esq.
Associate Counsel
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